

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs April 25, 2006

STATE OF TENNESSEE v. THOMAS ALVIN CARTER

Appeal from the Criminal Court for Knox County
No. 74905 Richard R. Baumgartner, Judge

No. E2005-01163-CCA-R3-CD - Filed June 7, 2006

In this case appealed by Defendant Thomas Alvin Carter from the Knox County Criminal Court, we review the sufficiency of the evidence convicting the defendant of theft of property valued between \$10,000 and \$60,000 and the defendant's claim that the trial court erred in denying his motion for mistrial. We perceive no reversible error and affirm the judgment.

Tenn. R. App. P. 3; Judgment of the Criminal Court is Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JERRY L. SMITH and THOMAS T. WOODALL, JJ., joined.

Brandt W. Davis, Knoxville, Tennessee, for the Appellant, Thomas Alvin Carter.

Paul G. Summers, Attorney General & Reporter; Rachel E. Willis, Assistant Attorney General; Randall E. Nichols, District Attorney General; and Ta Kisha M. Fitzgerald and Philip H. Morton, Assistant District Attorneys General, for the Appellee, State of Tennessee.

OPINION

The evidence in the defendant's jury trial showed that, at approximately 5:30 p.m. on December 12, 2000, a white Eagle Distributing Company tractor-trailer beer truck with 200 to 300 cases of beer was stolen from the parking lot of Judy's on Middlebrook Pike.

An employee of the Cellar Bar in Alcoa, Blount County, testified that on the evening of December 12, 2000, "before it got dark," but when "it was too late for a beer truck," a beer truck "pulled in." She testified, "A guy come [sic] to the door and asked if we wanted to buy beer for \$10 a case, and we said no." She testified that he "didn't know how to drive the truck very good" and "had to have a couple of cars removed so he could get out." She testified that she was unable to identify the truck driver; however, a patron of the Cellar Bar on the evening of December 12, 2000, testified that the defendant came into the bar and requested that some cars be moved so he could turn

his beer truck around. This witness and other patrons left the bar with the defendant. The witness moved his car but did not see the defendant get into the beer truck.

Glenn Steele, a long-time acquaintance of the defendant's, testified that at 8:00 or 9:00 p.m. on December 12, 2000, the defendant drove a white truck, without a trailer, into the Steele driveway in Loudon County. Mr. Steele saw only the back of the tractor and saw no markings on it. Mr. Steele denied recognizing the truck as a beer truck and denied seeing the defendant remove beer from the truck. After a short conversation with Mr. Steele, the defendant drove away.

Teena Steele, Glenn Steele's wife, testified that she went to work at approximately 5:30 p.m. on December 12, 2000, and when she returned around midnight, she noticed two or three 12-pack cases of Michelob beer in her garage that she had not seen when she left earlier that evening.

An officer with the Blount County Sheriff's Department, Steven Blankenship, testified that, pursuant to a search of the Steele residence on December 16, 2000, he recovered beer from the house and Budweiser calendars from a truck and a car parked in the driveway. Mr. Blankenship testified that, on December 16, Glenn Steele told him that the defendant came to the residence "the other night" in a beer truck, "threw out several cases of beer," and left.

A representative of Eagle Distributing Company testified that the trailer stolen on December 12 was left on a railroad track and was destroyed by a train. He testified that the beer containers exhibited to Deputy Blankenship's testimony bore a bottling date of November 14, 2000. He elaborated that the beer typically arrives from the bottler seven to ten days after bottling and that the product usually would be distributed within two weeks. He surmised that the beer containers found in the Steele home could have been on the stolen truck. He further testified that "Michelob" is a brand manufactured by Budweiser and is sold and distributed by Eagle Distributing Company, a Budweiser distributor. He also identified the calendars recovered from the vehicles at the Steele residence as year-end calendars for Eagle Distributing Company's customers. Finally, he testified that the value of the stolen tractor was \$39,487, the value of the stolen trailer was \$21,000, and the value of the stolen cases of beer was \$6,506.65.

A fingerprint analyst with the Knoxville Police Department testified that he retrieved fingerprints from the Eagle Distributing tractor found parked near Judy's on Middlebrook Pike on the morning of December 13, 2000. Although he was unable to identify the person who left a fingerprint on the interior of a door of the tractor, inside the tractor cab he found a cookie wrapper which bore the defendant's fingerprint.

The jury convicted the defendant of theft, and the trial court sentenced the defendant to a term of nine years in the Department of Correction.

I. Sufficiency of the Evidence

In challenging the circumstantial evidence presented against him, the defendant points to the meagerness of the evidence that linked him to the stolen truck. He emphasizes that the patron of the Cellar Bar, although identifying the defendant as the man who requested that cars be moved, did not describe the beer truck that he saw in the Cellar Bar parking lot. The defendant posits that the state's entire case rests precariously upon a single fingerprint found on a cookie wrapper inside the truck cab, pointing out that no other fingerprints of the defendant were found on the recovered truck, trailer, or beer containers.

When an accused challenges the sufficiency of the evidence, an appellate court's standard of review is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 324, 99 S. Ct. 2781, 2791-92 (1979); *State v. Winters*, 137 S.W.3d 641, 654 (Tenn. Crim. App. 2003).

In determining the sufficiency of the evidence, this court should neither re-weigh the evidence nor substitute its inferences for those drawn by the trier of fact. *Winters*, 137 S.W.3d at 655. Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). Significantly, this court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Cabbage*, 571 S.W.2d at 835.

These rules apply to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. *Winters*, 137 S.W.3d at 654. Although a criminal offense may be established exclusively by circumstantial evidence, *Duchac v. State*, 505 S.W.2d 237 (Tenn. 1973), an accused may be convicted exclusively on circumstantial evidence only when the facts and circumstances are so strong and cogent as to exclude every other reasonable hypothesis save the guilt of the defendant, *State v. Crawford*, 225 Tenn. 478, 482, 470 S.W.2d 610, 612 (1971). In other words, "[a] web of guilt must be woven around the defendant from which he cannot escape and from which facts and circumstances the jury could draw no other reasonable inference save the guilt of the defendant beyond a reasonable doubt." *Id.* at 484, 470 S.W.2d at 613.

"A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent." Tenn. Code Ann. § 39-14-103 (2003). In the present case the defendant was convicted of a Class C felony theft offense. *See id.* § 39-14-105(4) (establishing as a Class C felony a theft of property valued at \$10,000 or more but less than \$60,000).

Upon our review, we conclude that the circumstantial evidence, in the light most favorable to the state, permits no other reasonable inference except that the defendant exercised

control over the property of Eagle Distributing Company, intending to deprive the owner of the property and without the effective consent of the owner. The white beer truck was stolen shortly after 5:30 p.m. on December 12, 2000. Before dark that evening, a beer truck driven by the defendant appeared at a bar in Alcoa. The man driving the truck offered to sell beer off the truck to the bar manager. The driver was inexperienced in handling the tractor-trailer rig. Within two or three hours, the defendant drove a white truck tractor onto Mr. Steele's property. Later that evening, Ms. Steel found in her garage two or three cases of Michelob beer that had not been there when she went to work at 5:30 p.m. Four days later, officers recovered from the Steele residence beer bearing brands handled by Eagle Distributing Company and bottling dates that were consistent with beer that would have been on board the stolen truck on December 12, 2000. Officers also recovered from vehicles parked at the Steele residence Budweiser calendars that were consistent with those being distributed at the time by Eagle Distributing Company to their customers. The stolen tractor was recovered without the trailer, which had been left parked on a railroad and had been destroyed by a train. Finally, a cookie wrapper bearing the defendant's fingerprint was found inside the recovered truck tractor.

We conclude that the evidence unerringly shows that on December 12, 2000, the defendant was in possession of the stolen truck. In Tennessee, an unsatisfactorily explained possession of very recently stolen property may, in view of the attendant circumstances, support a conviction of theft. *See State v. Hatchett*, 560 S.W.2d 627, 629 (Tenn. 1978). This inference of guilt remains viable, even in the face of contradictory evidence and any explanation offered by the defendant. *See State v. Land*, 681 S.W.2d 589, 591 (Tenn. Crim. App. 1984). It is within the jury's province to weigh the significance of the inference. *See Bush v. State*, 541 S.W.2d 391, 395 (Tenn. 1976). Thus, we conclude that in view of the attendant circumstances, the state established the defendant's guilt of theft.

II. Mistrial Claim

During the trial testimony of Deputy Blankenship, he stated that he went to the Steele residence on December 16, 2000, to find the defendant "on some criminal warrants." The defendant objected and, out of the presence of the jury, moved for a mistrial, characterizing Mr. Blankenship's statement as indicating to the jury the existence of "other" criminal charges pending against the defendant. The trial court reviewed the testimony, determined that Mr. Blankenship's statement did not suggest "other" criminal charges, and ruled that it "would be foolish to raise any other issue with this jury." The court declined to give a curative instruction, stating, "I'm going to leave it alone that they were looking for [the defendant] that night."

The defendant miscasts his appellate argument that reversal of the trial court's ruling is mandated by Tennessee Rule of Evidence 608. *See* Tenn. R. Evid. 608(b) ("Specific instances of conduct of a witness for the purpose of attacking or supporting the witness's character for truthfulness, other than convictions of crime as provided in Rule 609, may not be proved by extrinsic evidence."). Because Rule 608 addresses the credibility and impeachment of witnesses, whereas Tennessee Rule of Evidence 404(b), in general, provides "[e]vidence of other crimes, wrongs, or acts

is not admissible to prove the character of [an accused] in order to show action in conformity with the character trait,” we conclude that the defendant articulates Rule 404(b) as the premise for his motion for mistrial. *See* Tenn. R. Evid. 404(b); *see also State v. James*, 81 S.W.3d 751, 758 (Tenn. 2002) (“The theory underlying Rule 404(b) is that the admission of other-acts evidence poses a substantial risk that a trier of fact may convict the accused for crimes other than those charged.”).

Whether to grant a mistrial is an issue entrusted to the sound discretion of the trial court. *See State v. McKinney*, 929 S.W.2d 404, 405 (Tenn. Crim. App. 1996). “Generally a mistrial will be declared in a criminal case only when there is a ‘manifest necessity’ requiring such action by the trial judge.” *State v. Millbrooks*, 819 S.W.2d 441, 443 (Tenn. Crim. App. 1991). On appeal, this court will disturb a trial court’s denial of a motion for mistrial only when there is an abuse of discretion. *State v. Adkins*, 786 S.W.2d 642, 644 (Tenn. 1990); *State v. Williams*, 929 S.W.2d 385, 388 (Tenn. Crim. App. 1996).

In the present case, the trial judge, who heard and observed Deputy Blankenship testify, stated, “I don’t think we got to [the] point” of indicating the presence of charges against the defendant other than the theft charge under investigation. The deputy went to the Steele home four days after the Eagle Distributing Company theft, looking for the defendant in connection with the theft. The trial judge concluded that it was reasonable for the jury to surmise that any criminal warrant in the deputy’s possession related to this case. We are unconvinced that the trial court abused its discretion in denying a mistrial in this situation.

We know that apt instructions may sometimes cure improper evidence and alleviate the need for a mistrial, *see. e.g., Millbrooks*, 819 S.W.2d at 443 (affirming the denial of a mistrial based upon prejudicial character evidence being countered by curative instructions), and we also know that the trial court declined to give curative instructions in the present case. Nevertheless, the circumstances that belie the need for a mistrial also place the withholding of curative instructions well within the ambit of the trial court’s discretion. The trial judge reasonably concluded that any instructional remarks about Mr. Blankenship’s reference to criminal warrants would only call prejudicial attention to the otherwise relatively innocuous testimony. The trial court acted within its discretion in determining that instructions would be ill-advised.

III. Conclusion

The circumstantial evidence in this case supports the conviction, and the trial court’s denial of relief in the form of a mistrial or curative instructions was not an abuse of discretion. Accordingly, we affirm the conviction.

JAMES CURWOOD WITT, JR., JUDGE